

Section 13-1 Introduction

This Chapter sets forth the procedure by which both the ordinance text and the zoning maps may be changed. It also explains the concept of special use rezoning, a form of rezoning which changes a zoning classification from one to another but limits the number of uses in the newly proposed zone and requires that a site specific development plan be filed with the application. This is in contrast to a conventional rezoning, which changes from one general zoning classification to another and includes all of the uses permitted in the district, as long as the proper permits can be issued.

Section 13-2 How to use this Chapter

Information in this Chapter is organized as follows:

Definitions	Section 13-3
Part I. Amendments to Ordinance Text and Zoning Maps	Section 13-4 to 13-7
Part II. Special Use ("SU") Rezoning District Option	Section 13-8 to 13-9
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Part IV. Minor Changes to be considered by the Zoning Administrator, Modifications to be considered by Board or Commission	Section 13-11
Part V. Amending "SU" development plans, violations, and reapplying.	Section 13-12 to 13-14
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Section 13-3 Definitions

General Zoning District-Any of the basic zoning districts created by Chapter Three of this Ordinance.

Site Specific Development Plan- A site specific development plan showing the design, layout and configuration of the site, including existing and proposed conditions. See Chapter 12, Major Site Plan. This plan is used when affixing "SU" zoning district status to a property.

Special Use Zoning District ("SU" District)-Considered a “floating” zoning district. This district is created only at the request of the property owner and is built upon one of the general zoning districts described above and developed as set forth in the approved site specific development plan.

Text- Refers to those written rules, requirements, etc. known commonly as The Cabarrus County Development Ordinance.

Zoning Maps- Refers to the official zoning maps bearing the zoning district categories parcel by parcel throughout the County. Maintained in the office of the Zoning Administrator, Zoning Division, Cabarrus County Planning and Development Department.

PART I AMENDING THE ORDINANCE TEXT AND ZONING MAPS

Section 13-4 Amending the Ordinance text and Zoning Maps

Amendments may be made to:

- correct an error in text or Zoning Maps,
- change the regulations of the text,
- extend the boundary of an existing zoning district because of changed or changing conditions in a particular area, or
- rezone property from one zoning category to another (general or special use district)

Section 13-5 Initiation of amendments

Amendments may be initiated as follows:

1. To the text:

- By the Cabarrus County Board of Commissioners
- By the Cabarrus County Planning and Zoning Commission and Staff

2. To the zoning maps

- By the Cabarrus County Board of Commissioners
- By the Cabarrus County Planning and Zoning Commission and Staff
- By any property owner, citizen, or agent thereof

Section 13-6 Petition for rezoning by non-owner

When a petition to rezone a property is initiated by someone other than the property owner or his agent, the Board of Commissioners, the Planning and Zoning Commission or Planning Staff, the petition cannot be accepted without a notarized statement from the owner(s) of the property in question agreeing to the proposed rezoning request.

Section 13-7 Options for rezoning property in Cabarrus County

Property in Cabarrus County may be considered for rezoning to a different zoning classification by requesting:

1. A Conventional Rezoning Request which proposes rezoning to a general zoning district
2. A Special Use District Rezoning Request which proposes a unique, and in many cases more restrictive, zoning district that includes a list of permitted uses for the site being considered and a site specific development plan

Option 1: Conventional Rezoning Request (rezoning from one general zoning district to another general zoning district)

A petitioner may ask that his/her property be rezoned to any of the general zoning districts set forth in Chapter Three of this Ordinance.

To initiate the process, the petitioner must file a complete Rezoning Application with the Cabarrus County Planning and Development Department, and submit the appropriate fees as established by the County Board of Commissioners.

Option 2: Rezoning to the Special Use Zoning District

A petitioner may ask that his/her property be rezoned to a special use zoning district built upon the existing general zoning districts set forth by this Ordinance. To initiate the process, the petitioner must file a complete Special Use Rezoning Application with the Cabarrus County Planning and Development Department and submit the appropriate fees, along with the applicable submittal materials, including a site specific development plan.

PART II THE SPECIAL USE DISTRICT

Section 13-8 Using the Special Use District rezoning option

Because of the refinement of this option, the Planning and Zoning Staff strongly encourages its use. Special use district rezoning affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses. This option is most beneficial when rezoning land to establish a use or uses that require the issuance of a conditional use permit.

Section 13-9 Creating the Special Use District

Choosing the special use district

Keeping the proposed use or uses in mind, the Petitioner may choose the desired district from any of the general zoning districts (where the proposed use is permitted either outright or conditionally) as set forth within this Ordinance. Upon selection, the requested zoning district will be known by the name of the general zoning district with the suffix "SU" added to identify its special use status. For example, Limited Commercial may be selected and the suffix "SU" added, to create "Limited Commercial-SU".

Land use within the special use district

The Petitioner will describe the exact land use proposed for the "SU" District and will provide a complete list of proposed uses for the site. Such use(s) may be selected from any of the uses, whether permitted by right or conditional, allowed in the general zoning district upon which the "SU" district is based.

Site Specific Development Plan

Along with the application for special use district status, the Petitioner shall provide a major site specific development plan as described in Chapter 12, Section 12-9.

Relationship of the Proposed Zoning Change to Cabarrus County Land Use Plans and Studies
Petitioner will provide a narrative of how the proposed zone change will conform, complement or otherwise impact long range plans for the development of land in the County as well as any other special studies.

PART III PROCEDURES FOR ZONING CHANGES

Section 13-10 Filing procedures

Because the options for rezoning have more similarities than differences, one procedure for filing is set forth below with applicable differences noted.

Step 1 Pre-application Meeting

The Petitioner is required to schedule and attend a pre-application meeting with staff before filing any rezoning petition. At this meeting, staff will discuss the proposed rezoning with the Petitioner along with information related to the rezoning process, water and sewer availability, applicable land use plans, established deadlines for submittal and the format used for the Planning and Zoning Commission meetings. Design Professionals working on the project with the Petitioner should also attend this meeting as staff will go into detail about the submittal requirements and materials needed for the application to be considered complete.

Step 2 Filing the Application

The Petitioner must file a complete application for the applicable type of rezoning request with the Planning and Development Department along with the appropriate fees. Applicable materials required for a complete submittal will be determined at the pre-application meeting. Incomplete applications will not be accepted and will not be scheduled for consideration by the Planning and Zoning Commission.

Conventional Rezoning

When the complete application is received by Planning Staff, Staff and appropriate agents will review the application. Staff will also begin preparation of the staff report for the Planning and Zoning Commission meeting. Staff will schedule a meeting date and notify adjacent property owners of the

meeting and that a public hearing will be conducted at the meeting. A sign advertising the meeting and hearing will also be placed on the property being considered for the change in zoning.

Special Use Rezoning

If the proposed rezoning is for a Special Use Rezoning, once the complete application is received, Staff and appropriate agencies will review the application, the proposed site plan and the list of uses. Review comments will be forwarded to the Petitioner. The Petitioner will need to address the comments in writing, revise the site plan accordingly and submit the corrections to the Planning Division.

Once advised that the site plan is in compliance with the ordinance and ready to be presented to the Planning and Zoning Commission, the Petitioner will work with staff to submit the appropriate number of copies of the applicable documents and site plans for the Planning and Zoning Commission meeting.

When the copies of the plan are received, Staff will begin to prepare a staff report, schedule a meeting date and notify adjacent property owners of the meeting and that a public hearing will be conducted regarding the proposal. A sign advertising the public hearing will also be placed on the property being considered for the special use rezoning.

Step 3 The Planning and Zoning Commission

The Planning and Zoning Commission considers all applications to amend the zoning maps or text of this Ordinance at its regularly scheduled meetings.

Complete applications shall be filed with the Planning and Development Department by the submission deadline without exception so that staff evaluations can be accomplished in accordance with established deadlines and applicable state statutes for providing required notice.

Step 4 Planning and Zoning Commission Decision or Recommendations to Board of Commissioners

A special use "SU" rezoning decision shall be supported by findings of fact derived from sworn testimony presented at the official public hearing held by the Planning and Zoning Commission, conducted as a quasi-judicial hearing.

For the "SU" rezoning option, conditions may be proposed by the applicant or the county or its agencies. These conditions shall be incorporated into the rezoning regulations and permitting requirements.

The Planning and Zoning Commission decision shall be considered the final action if the vote to approve or deny a rezoning request is of at least three-fourths of the Planning and Zoning Commission members present and not excused from voting and if no appeal of the decision is filed. This action is also referred to as an "expedited" vote.

A consistency statement shall be prepared for each rezoning petition.

Action by the Planning and Zoning Commission on text amendments are recommendations and shall be forwarded to the Board of Commissioners for final consideration.

Step 5 Board of Commissioner's Public Hearing (if needed)

If an approval or denial of a rezoning request is by a vote of less than three-fourths of the members of the Planning and Zoning Commission or if an appeal is filed, then the County Board of Commissioners shall make the final decision on the rezoning petition.

Any person aggrieved by the action of the Planning and Zoning Commission shall have the right to appeal the decision to the Board of Commissioners by giving notice in writing to the Planning and Zoning Commission Clerk or Zoning Administrator within fifteen (15) days of the action of the Planning and Zoning Commission.

- In the case of an appeal, the Board of County Commissioners shall hear the application *de novo* (anew).

The Board of Commissioners shall hold a public hearing for all proposed text amendments.

Notification (Electronic Publication, Newspaper Advertisements, Mailed Notices and Posting of Signs)

Electronic Publication

Prior to the official public hearing, notification shall comply with Cabarrus County Ordinance Number 2004-17 (see Session Law 2003-81). In general, notice will be given by electronic means at least ten (10) days before the date fixed for the public hearing. Alternatively, newspaper advertisements published in accordance with North Carolina General Statute §153A-323 may substituted for the electronic publication.

First Class Mail

Notice by first class mail shall be sent to the owner of the parcel(s) of land involved in the proposed rezoning. This mail notification shall also be sent to all property owners who have property that abuts the parcel(s) of land under consideration (including parcels located across any rights-of-ways). The first class mail notice shall be sent to the last address listed for such owner(s) as identified on the County tax abstracts.

The person or persons mailing such notices shall certify to the decision making body the date and circumstances of mailing and such certificate shall be deemed conclusive in the absence of fraud. The first class mail notice of this section shall not be required in the following situations:

1. The total rezoning of all property within the boundaries of the County or a zoning area as defined in North Carolina General Statute §153A-342

2. The zoning is an initial zoning of the entire zoning jurisdiction area;
3. The zoning reclassification action directly affects more than fifty (50) parcels owned by a total of at least fifty (50) different property owners;
4. The reclassification is an amendment to the zoning text; or
5. The County is adopting a water supply watershed protection program as required by North Carolina General Statute §143-214.5.

In any case where this subsection eliminates the notice required earlier in this section, the County shall publish notice of the hearings required by North Carolina General Statute §153A-323, provided that each of the advertisements shall not be less than one-half (1/2) of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the County's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the decision making body the date and circumstances of mailing and the certificates shall be deemed conclusive in the absence of fraud.

Posting of Signs

The County shall post one or more prominent signs immediately adjacent to the subject area of a rezoning petition reasonably calculated to give public notice of the proposed rezoning.

Timing of Public Hearing by County Commissioners

If the Planning and Zoning Commission action is appealed as described in Step 4 above, then the party pursuing the action before the Board of Commissioners shall pay the advertising fee and the action shall be re-advertised.

Within forty-five (45) days of a recommendation by the Planning and Zoning Commission on an application to amend text or the zoning maps, or, within the lapse of forty-five (45) days with no recommendation, a public hearing may be scheduled with the Board of Commissioners to be held at its next available meeting. Notification of the hearing shall follow the requirements above.

When evaluating a proposed amendment, both the Planning and Zoning Commission and the Board of Commissioners will consider the following:

1. the amendment application itself and the information presented within;
2. the testimony presented at the public hearing;
3. consistency with County wide planning objectives and how these would be affected by the proposed change; and,

4. in the case of map changes to a general zoning district, the compatibility of all uses allowed within the proposed zoning classification with uses permitted on other property in the vicinity. When rezoning to a more intensive zoning district, the availability of governmental water and sewer to serve the property shall be considered as well as the ability to provide other required public services.

Nothing in this section should be deemed to prohibit the County from using any other applicable criteria in determining whether or not to approve a zoning map amendment.

Board of Commissioners Action on Amendments

At the conclusion of the public hearing on a proposed amendment, the Commissioners may proceed to vote on same, refer it to either the Planning and Zoning Commission or Staff for further study, or take any other action consistent with its usual rules of procedure. Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances.

Action Subsequent to the Commission Action

The Zoning Administrator shall within seven (7) days cause notice of the disposition of the application to be sent by mail to the applicant and a copy of the decision to be filed in the office of the Zoning Administrator. The Zoning Administrator, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Commission's action.

The Effect of Zoning Map Amendment

A vote to rezone property will result in the appropriate change being made to the zoning maps.

In the event of an "SU" district rezoning, the final site specific development plan is itself a condition of the rezoning. Accordingly, the site specific development plan must be filed in the Planning and Zoning Office and will be enforced as part of the Cabarrus County-Ordinance. The site specific development plan will also be filed in the Cabarrus County Register of Deeds Office as a deed restriction (runs with the land) upon the subject property. It will be binding in perpetuity on the property upon which it is issued unless another rezoning request is brought forth and approved.

Where substantial construction has not begun within two (2) years of an "SU" rezoning approval, the property in question may be changed to another designation after a public hearing is held in compliance with the required procedure for a zoning map amendment.

Issuance of Permit

When an application for rezoning to an "SU" district has been approved by the appropriate approving agency as described above, the petitioner must secure a Certificate of Zoning Compliance from the Office of the Zoning Administrator for Cabarrus County prior to the commencement of any development or land disturbing activity.

**PART IV BOARD OR COMMISSION APPROVED SITE PLAN, MINOR CHANGES VERSUS
MODIFICATION TO PLAN**

Section 13-11 Minor changes or modifications, action by Zoning Administrator or approving Board or Commission

The Zoning Administrator is authorized to approve minor changes to an approved site development plan, as long as the proposed changes are in harmony with action of the approving Board or Commission, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board or Commission and shall be handled as a new application.

The Zoning Administrator shall use the following standards in determining whether a proposed action is a minor change or a modification:

1. Any change in location by more than 20 feet or any increase in the size or number of signs shall constitute a modification.
2. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in number of dwelling or lodging units, and/or an increase in outside land area devoted to sales, displays, or demonstrations.
3. Any change in parking areas resulting in an increase or reduction of ten (10%) percent or more in the number of spaces approved by the approving agency shall constitute a modification. In no case shall the number of spaces be reduced below the minimum required by this Ordinance.
4. Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building as shown on the approved plan shall be considered a modification.
5. Substantial change in the location of open space, recreation facilities or landscape screens shall constitute a modification. A decrease in the amount of open space shall be considered a modification.
6. A change in use shall constitute a modification.
7. Substantial changes in pedestrian or vehicular access or circulation shall constitute a modification.

Review of record required

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of proceeding on the original application for approval.

Action required on proposed modifications

The Zoning Administrator shall, if it is determined that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the Commission which approved the original application. The Commission may approve or disapprove the application for approval of a modification and, prior to its action, shall hold a public hearing.

PART V AMENDING "SU" SITE SPECIFIC DEVELOPMENT PLANS, VIOLATIONS, AND REAPPLYING

Section 13-12 Minor changes and modifications in approved "SU" District development plans

The Zoning Administrator is authorized to approve minor changes in the implementation of a site specific development plan as long as such changes are in harmony with the overall intent of the rezoning. A proposed change that becomes a modification of the rezoning shall not be within the authorizing scope of the Zoning Administrator but instead, shall be handled as a new application. In determining the degree of change, the Zoning Administrator may refer to those criteria set forth in Section 13-11 of this Ordinance. Administrative decisions on change must be made in writing and kept on file within the Office of the Zoning Administrator.

Section 13-13 Violation of the terms and conditions of an "SU" District rezoning

A violation of a condition of rezoning to an "SU" District as set forth in the final site specific development plan and other related official paperwork associated with such rezoning shall be treated the same as a violation of this Ordinance, subject to the same remedies and penalties.

Upon determining that such a violation has occurred, the Zoning Administrator shall notify the property owner of such findings either by certified mail or in person, and set a reasonable time for the violation to be corrected or abated. When a violation is not corrected or abated within the time period set by the Zoning Administrator, the Zoning Administrator or any aggrieved person may institute suit or an injunction, mandamus or other appropriate action or proceedings to correct or abate the violation.

Section 13-14 Effect of denial on subsequent petitions for zoning amendment

An application for a zoning amendment that has been denied, in whole or in part, shall not again be processed for consideration by the County for a one (1) year period from the date of denial.

The Zoning Administrator may waive the one (1) year waiting period if it is determined that there are substantial changes to a previously proposed rezoning petition that was considered by the Planning and Zoning Commission and denied.

This restriction shall not apply to any amendment or petition submitted by the Planning and Zoning Commission, Planning Staff or the Board of County Commissioners.

PART VI VESTING OF DEVELOPMENT RIGHTS

Section 13-15 Vesting of development rights under County Ordinance

A developer/owner may petition to establish a vested right under the Ordinance to complete a project by making a formal request to the Planning and Zoning Commission. Vested rights may only be requested for a previously approved site specific development plan.

A developer/owner wishing to establish a common law vested right must file a petition in Superior Court as the Planning and Zoning Commission does not have the authority to determine common law vested rights. The Planning and Zoning Commission may only consider vested rights related to County development ordinances.

Step 1 Pre-application Meeting

The Petitioner is required to schedule and attend a pre-application meeting with staff before filing a Vested Rights Application. At this meeting, staff will discuss the vesting process with the Petitioner along with established deadlines for submittal and the materials that will be required for the Planning and Zoning Commission meeting. Design Professionals working on the project with the Petitioner should also attend this meeting.

Step 2 Filing the Application

The Petitioner must file a complete application for the vesting of development rights with the Planning and Development Department along with the appropriate fees. Applicable materials required for submittal will be determined at the Pre-application meeting. Incomplete applications will not be accepted.

Step 3 Planning and Zoning Commission Consideration

Upon receiving a request for vested rights, the Planning and Zoning Commission shall consider the application for vested rights and shall hold a public hearing to review the request and the

application materials submitted. If the request is approved, the vested rights shall run with the land for a period of two (2) years, beginning from the date of approval by the Planning and Zoning Commission.

Any variations from the original plan must be approved by the Planning and Zoning Commission.

Section 13-16 Multi-Phased Development as defined in North Carolina General Statute § 153A-344.1(b)(7)

For purposes of this section, Multi-Phased Development means a development containing 100 acres or more that (1) is submitted for site plan approval for construction to occur in more than one phase and (2) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval

Amendments in the applicable zoning, subdivision, or unified development ordinance shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as defined in North Carolina General Statute §153A-344.1(b)(7).

A multi-phased development shall be vested for the entire development with the applicable zoning, subdivision, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multi-phased development.

A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site specific development plan approval is granted for the initial phase of the multi-phased development.